

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

Teresa R. Campbell, Bar No. 162105
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: 415-538-4126
Facsimile: 415-904-5490

Attorneys for Steve Poizner,
Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of

PACIFIC SPECIALTY INSURANCE
COMPANY
Respondent.

File No. UPA 2007-00001

OAH No. N2007060909

**ORDER TO SHOW CAUSE AND
STATEMENT OF CHARGES; NOTICE
OF MONETARY PENALTY**

WHEREAS, the Insurance Commissioner of the State of California (hereafter, "the Commissioner") has reason to believe that PACIFIC SPECIALTY INSURANCE COMPANY (hereinafter "Respondent") has engaged in or is engaging in this State in the unfair methods of competition or unfair or deceptive acts or practices set forth in the STATEMENT OF CHARGES contained herein, each falling within Section 790 et seq. of the California Insurance Code ("CIC"); and

WHEREAS, pursuant to CIC Section 701, the Commissioner of the State of California has reason to believe that Respondents are in default for failure to comply with the laws of this State regarding the governmental control of such insurers by the State; and

WHEREAS, the Commissioner believes that a proceeding with respect to the alleged acts of RESPONDENT would be in the public interest;

1 NOW, THEREFORE, and pursuant to the provisions of CIC § 790.05, RESPONDENT is
2 ordered to appear before the Commissioner on **November 1 - 2, 2007 at Office of**
3 **Administrative Hearings, 1515 Clay Street, Room 206, Oakland, California, at 9:00 A.M.,**
4 and show cause, if any cause there be, why the Commissioner should not issue an Order requiring
5 Respondent to Cease and Desist from engaging in the methods, acts, and practices set forth in the
6 STATEMENT OF CHARGES contained herein in Paragraphs 1 through 3, inclusive, and
7 imposing the penalty set forth in Section 790.035.

8 **JURISDICTION AND PARTIES**

9 1. The California Department of Insurance (hereafter "Department") brings this
10 matter before the Commissioner pursuant to the provisions of Insurance Code §790.05.

11 2. Respondent is, and at all relevant times has been, the holder of a Certificate of
12 Authority issued by the Commissioner and is authorized to transact the business of insurance in
13 California.

14 **STATEMENT OF CHARGES**

15 3. Under the authority granted pursuant to Part 2, Chapter 1, Article 4, Sections 730,
16 733, 736 and Article 6.5, Section 790.04 of the CIC and Title 10, Chapter 5, Subchapter 7.5,
17 Section 2695.3(a) of the California Code of Regulations ("CCR"), the Commissioner made an
18 examination of Respondent's claims practices and procedures in California. The examination
19 covered Respondent's claims handling practices during the period September 1, 2003 through
20 August 31, 2004. The examination was made to evaluate, in general, Respondent's compliance
21 with the contractual obligations in its insurance policy forms, its own procedures, and provisions
22 of the CIC, the CCR, other insurance related statutes, and case law. The Examination was
23 primarily conducted at Respondent's office in Menlo Park, California. The Department examined
24 696 claims files. As a result of the examination, the Department identified 182 claims handling
25 violations of CIC Sections 790.03(h), 1871.3, 1874.87 and CCR Sections 2632.13, 2695.3,
26 2695.4, 2695.5, 2695.7 and 2695.8. Additionally, the Department identified violations of
27 California Vehicle Code Section ("CVC") 11515(b). The pattern and frequency of the violations
28 indicate a general business practice.

1 4. As a result of the Examination referenced in paragraph 3, the Commissioner, in his
2 official capacity, now alleges that Respondents have violated provisions of the CIC, CCR, and
3 CVC as follows:

4 **SPECIFIC VIOLATIONS:**

5 a) In 10 instances, Respondent failed to effectuate prompt, fair and equitable
6 settlements of claims in which liability had become reasonably clear and attempted to settle a
7 claim by making a settlement offer that was unreasonably low, in violation of CCR § 2695.7(g).

8 b) In 10 instances, Respondent's claim files failed to contain all documents,
9 notes, and work papers that pertain to the claim, in violation of CCR § 2695.3(a).

10 c) In 12 instances, Respondent failed to disclose all of the benefits, coverage,
11 time limits or other provisions of the insurance policy, in violation CCR § 2695.4(a).

12 d) In 6 instance Respondent failed to include a statement in its claim denial
13 that, if the claimant believed the claim has been wrongfully denied or rejected, he or she may
14 have the matter reviewed by the Department of Insurance, in violation of CCR § 2695.7(b)(3).

15 e) In 5 instances, Respondent failed to provide a written basis for the denial of
16 the claim, in violation CCR § 2695.7(b)(1).

17 f) In 8 instances, Respondent failed to adopt and implement reasonable
18 standards for the prompt investigation and processing of claims arising under insurance policies,
19 in violation CIC § 790.03(h)(3).

20 g) In 4 instances, upon acceptance of the claim Respondent failed to tender
21 payment within 30 calendar days, in violation of CCR §2695.7(h).

22 h) In 17 instances, Respondent failed to provide written notice of the need for
23 additional time every 30 calendar days, in violation of CCR § 2695.7(c)(1).

24 i) In 10 instances, Respondent failed to represent correctly to claimants,
25 pertinent facts or insurance policy provisions relating to a coverage at issue, in violation of CIC §
26 790.03(h)(1).

27 j) In 60 instances, Respondent failed to included, in the settlement, all
28 applicable taxed, license fees and other fees incident to the transfer of evidence of ownership of

1 the comparable automobile, or the Respondent failed to explain in writing for the claimant the
2 basis of the fully itemized cost of the comparable automobile, in violation of CCR § 2695.8(b)(1).

3 k) In 2 instances, Respondent failed to record in the file the date it received,
4 the date it processed and the date it transmitted or mailed every relevant document in the file, in
5 violation of CCR § 2695.3(b)(2).

6 l) In 11 instances, Respondent failed, upon receiving proof of claim, to accept
7 or deny the claim within 40 days, in violation of CCR § 2695.7(b).

8 m) In 8 instance, Respondent failed to respond to communications within 15
9 calendar days, in violation of CCR § 2695.5(b).

10 n) In 3 instance, Respondent failed to respond to acknowledge notice of a
11 claim within 15 calendar days, in violation of CCR § 2695.5(e)(1).

12 o) In 1 instance, Respondent failed to acknowledge and act reasonably
13 promptly upon communications with respect to claims arising under insurance policies, in
14 violation of CIC § 790.03(h)(2).

15 p) In 1 instance, Respondent failed to document the determination of value, in
16 violation of CCR § 2695.8(b)(1)(C).

17 q) In 1 instance, Respondent failed to supply the claimant with a copy of the
18 estimate upon which the settlement was based, in violation of CCR § 2695.8(f).

19 r) In 1 instance, Respondent failed to provide written notification to a first
20 party claimant as to whether the insurer intends to pursue subrogation, in violation of CCR §
21 2695.8(i).

22 s) In 1 instance, Respondent failed to written documentation of the basis of
23 betterment, depreciation, or salvage, in violation of CCR § 2695.8(k).

24 t) In 4 instances, Respondent failed to provide the insured with the Auto
25 Body Repair Consumer Bill of Rights, in violation of CIC §1874.87.

26 u) In 3 instance, Respondent failed to properly advise the insured that the
27 driver of the insured vehicle was principally at fault for the accident, in violation of CCR §
28 2632.13(e)(2).

1 v) In 1 instance, Respondent failed to properly instruct the insured regarding
2 the signing of the theft affidavit, in violation of CIC § 1871.3(b).

3 w) In 1 instance, Respondent failed to secure and retain a copy of the police
4 report, in violation of CIC § 1871.3(d)(3).

5 x) In 1 instance, Respondent failed to notify the insured or owner of his or her
6 responsibility to comply with CVC § 11515(b), in violation of CVC § 11515(b).

7 y) In 1 instance, Respondent failed to notify the Department of Motor
8 Vehicles that the owner of a total loss salvage vehicle retained possession of the vehicle, in
9 violation of CVC § 11515(b).

10 5. As a result of the claims examination, the Department recovered \$21,643 owed to
11 consumers that was improperly withheld during the claims process. Following the examination
12 of claims practices, RESPONDENT conducted additional reviews and audits of their claims files
13 to bring them in compliance with the law. As a result of these additional examinations,
14 RESPONDENT returned an additional \$29,346 to consumers in fees, deductibles, and other
15 amounts that were improperly withheld during the claims process.

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17 **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**
18 **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. Seq**

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20 6. The facts alleged above in Paragraphs 1 through 5 constitute grounds, under CIC §
21 790.05, for the Insurance Commissioner to order RESPONDENT to cease and desist from
22 engaging in such in such unfair acts or practices and to pay a civil penalty not to exceed five
23 thousand dollars (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to
24 exceed ten thousand dollars (\$10,000) for each act as set forth under Section 790.035 of the
25 California Insurance Code

26 7. The facts alleged in Paragraphs 1 through 5 show that RESPONDENT have failed
27 to carry out its contracts in good faith, constituting grounds for the Insurance Commissioner to
28 suspend the Certificate of Authority of RESPONDENT for a period not to exceed one year

1 pursuant to CIC § 704(b).

2 **PETITION FOR DISCIPLINE AND ORDER**

3 WHEREFORE, Petitioner prays for judgment against RESPONDENT as follows:

4 1. An Order to Cease and Desist from engaging in the methods, acts,
5 and practices set forth in the STATEMENT OF CHARGES as set forth above;

6 2. For acts in violation of Insurance Code Section 790.03 and the
7 regulations promulgated pursuant to Section 790.10 of the Insurance Code, as set forth
8 above, a civil penalty not to exceed five thousand dollars (\$5,000) for each act or, if the act
9 or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each
10 act;

11 3. For acts in violation of Section 704(b) of the California Insurance Code,
12 suspension of Respondent's certificate of authority for not exceeding one year or a fine of fifty-
13 five thousand dollars (\$55,000) in lieu of suspension.

14
15 Dated: July 3, 2007

16 STEVE POIZNER
Insurance Commissioner

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18 By _____/s/_____
19 Teresa R. Campbell
20 Senior Staff Counsel
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